MT LEGISLATIVE HISTORY

Chapter 383 1985

Bill H 622 S _____ Original bill & hist. ___C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) Feb 08	✓C	Hearing Date(s) Mar 21	✓C
Feb 16	✓C	Mar 23	✓C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out Feb 16	✓C	Mar 23	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 8, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Friday, February 8, 1985 at 8:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL NO. 622: Rep. Bob Thoft, House District #63, sponsor of the bill, testified in support of it. He said this is an act to delete as an element of the offense of issuing a bad check the requirement that it be done with the purpose of obtaining control over property or to secure property, labor, or services of another.

There being no further proponents or opponents, Rep. Thoft closed. It was brought out in brief discussion that HB 341 which was previously considered by the committee deals with the same statute.

CONSIDERATION OF HOUSE BILL NO. 667: Rep. Gene Donaldson, District No. 43, chief sponsor of the bill, appeared and offered testimony on its behalf. Rep. Donaldson stated this bill arose out of the county's concern that they are unable to provide adequate detention facilities for juveniles.

Steve Nelson, Chief of the Juvenile Justice Bureau for the Department of Justice, appeared and offered testimony in support of this bill. He submitted a written statement which reveals statistics prepared by the Montana Board of Crime Control outlining the present situation on this issue. The attachment was marked Exhibit A. He feels that Mountain View School may meet the needs of 60% of the juvenile jail population. He said that it would be a low cost temporary solution to the problem of providing facilities that meet the nationally accepted standards. It may prove to be a long term solution, and it will certainly allow time for planning and exploring additional alternatives.

Harold Hanser from Billings, Montana, appeared and offered testimony in support of the bill. He said it will at least provide counties immediate relief with trying to address the juvenile detention issue.

Richard Meeker, chief probation officer for the county of Lewis and Clark, stated his support for the bill. He stated

ACTION ON HOUSE BILL NO. 622: Rep. Keyser moved that HB 622 DO PASS. The motion was seconded by Rep. Gould and discussed. The motion carried unanimously.

ACTION ON HOUSE BILL NO. 528: Rep. Addy moved that HB 528 DO NOT PASS. The motion was seconded by Rep. Rapp-Svrcek and discussed.

Rep. Keyser feels the bill is badly written. He gets the impression that there are four or five sections in the bill which are objectional to the committee.

Rep. Hannah agreed that while the intent of the bill is not unreasonable, there are other problems with the bill.

With that the question was called, and the motion carried with Reps. Hannah and O'Hara dissenting.

RE-CONSIDERATION OF HOUSE BILL NO. 366: Rep. Brown moved to reconsider action on HB 366 for the purposes of tabling the bill. The motion was seconded by Rep. Addy. Rep. Keyser stated his strong objection to this motion. The motion to reconsider HB 366 carried 10-8. (See roll call vote.)

Rep. Brown further moved to table HB 366. The motion was seconded by Rep. Addy, and the motion failed due to a tie vote 9-9.

RE-CONSIDERATION OF HOUSE BILL NO. 210: Rep. O'Hara moved that HB 210 be taken off the table. The motion was seconded by Rep. Bergene, and a roll call vote was taken. The motion carried 10-7. (Rep. Miles did not vote.) Further action on HB 210 will take place later.

ADJOURN: A motion having been made and seconded, the meeting was adjourned at 1:00 p.m.

Tom Hannah

REP. TOM HANNAH, Chairman

STANDING COMMITTEE REPORT

February 16 19 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 622

FIRST reading copy (WHITE)
color

DELETE PURPOSE ELEMENT FROM BAD CHECK STATUTE

Respectfully report as follows: That HOUSE Bill No. 622

DO PASS

STATE PUB. CO.
Helena, Mont.

DAN, TOM HANNAH Chairman.

COMMITTEE SECRETARY

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: None.

Hearing on HB 541 was closed.

CONSIDERATION OF HB 594: Representative John Cobb, sponsor of HB 594, testified this is a simple bill. There is a gap in the law. There is no notice requirement here. This came out of the Landlord-Tenant Act. He gave this to the Department of Natural Resources and Conservation before he filed it, and they said they didn't have any problems with the bill.

PROPONENTS: Alan Eck, representing Montana Farm Bureau Federation, presented written testimony in support of the bill (Exhibit 3).

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: None.

Hearing on HB 594 was closed.

CONSIDERATION OF HB 622: Representative Bob Thoft, sponsor of HB 622, testified this is called the bad check bill. Under present law, if a person purchases goods or services and gives that person a check and the check is no good, it is considered a bad check. However, if that person puts those goods on an account and gives the person a bad check as payment on the account, it is not considered a bad check.

PROPONENTS: Riley Johnson, representing the National Federation of Independent Business, testified they feel this bill is a good companion to the bad check in a civil action, but it only provided for the civil remedy for the goods and services. This would provide a second alternative for larger checks and payments on account. It would help the small businesses that have to carry these accounts. Don Ingels, on behalf of Lake Milling Inc. in Hamilton, presented written testimony in support of the bill (Exhibit 4).

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Blaylock asked if they come in and give a check that does not have sufficient funds to cover it, but they have taken the goods because they are on account, would this apply?

Mr. Johnson replied its on the account. You can take action on the customer in court for non-collection of account, but not for a bad check.

CLOSING STATEMENT: None.

Hearing on HB 622 was closed.

CONSIDERATION OF HJR 37: Representative Tom Hannah, sponsor of HJR 37, testified he introduced this resolution at the request of the House Judiciary Committee. The resolution arose out of a frustration they had trying to deal with a bill by Representative Bradley that dealt with videotaping children and whether that evidence could be used in trial. They could not resolve the question of the rights of the accused which say the accused has the right to confront those that are accusing him. There are rules of evidence that deal with that. They killed Representative Bradley's bill which would have allowed for the videotaping of sexually abused children and brought forth this resolution to request that the supreme court do a study and research the rules of evidence and, in particular, this instance.

PROPONENTS: None.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Towe stated the only thing he is a little nervous about is page 3, lines 17-18. In effect you are saying if the supreme court believes the present hearsay rules can be amended, that the court be urgently requested to adopt such amendments. The legislature is thereby taking a firm position that they need to be amended. Representative Hannah replied the whereas and wherefore clauses explain what they recommend be done. The committee felt strongly about the issue before them. They felt it was a very important issue. Senator Towe stated his concern was not that the language was too strong, but wanted to know what part of them they wanted to amend. Representative Hannah replied just so videotapes could be used. Senator Mazurek asked if he would object if they made the request of the supreme court's commission on evidence. Representative Hannah replied no.

CLOSING STATEMENT: None.

Hearing on HJR 37 was closed.

CONSIDERATION OF HB 809: Representative Harry Fritz, sponsor of HB 809, testified he hopes this bill saves the state $2,000-3,000. This stems from a situation 10 years ago during the workmen's compensation problem

motion carried unanimously. Senator Brown moved HB 354 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HB 423: Senator Daniels moved HB 423 be recommended BE CONCURRED IN. Senator Blaylock asked who was liable when the airplane is landing and runs into a car. Senator Mazurek commented that is why we have lawyers and judges, and they can worry about that. Seantor Towe asked if this meant they have to go to the local public body and get authority in advance. Senator Mazurek responded they would go to the county commissioners. Senator Daniels suggested putting in something that says no liability will attach. Senator Mazurek suggesting something in the bill to relieve the local governing body from liability in case of a pothole in the road. Senator Galt asked if they carried liability insurance. Senator Daniels moved HB 423 be amended (see standing committee report for text of amendment). The motion carried unanimously. Senator Blaylock moved HB 423 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HB 722: Proposed amendments were submitted to the committee (Exhibit 4). Mr. Petesch explained the House took out 812 because they felt it involved prior restraint, but taking it out of the bill does not solve that problem for radio stations. 811 and 813 add in television and cable broadcasting. If you want approval of the content in advance, it should be put in for everyone or taken out for everyone. Senator Mazurek responded we should be consistent and allow the same protections and repeal it for both. Senator Towe moved HB 722 be recommended BE NOT CONCURRED IN. Senator Mazurek asked why you should do it for radio but not for TV. Senator Towe responded he was not sure you should do it for radio, but when you expand it to TV, he ash some real problems. They can clip it and show it. You can do it for radio, but it is not as invidious. Senator Pinsoneault stated you cannot compare radio and TV. It is like apples and oranges. On radio, you are only listening. On television, you are seeing, listening, and hearing. The motion carried with Senators Brown, Crippen, Mazurek, and Yellowtail voting in opposition.

ACTION ON HB 622: Senator Mazurek commented Senator Van Valkenburg thought this bill was just fine. Senator Daniels stated it is a lousy bill; it is terrible. Judge Loble always said a check is nothing but a promise to pay, so when it bounces, it is a broken promise. Nowe we are saying a guy writes his name on a check, and he breaks a promise. So when he writes his name on a contract, he breaks a promise. Now we are going to put him in jail. Senator Pinsoneault thought it was a good bill. Senator Mazurek stated you are going after him civilly, but not criminally without this bill. Senator Blaylock stated you come in and say I want that and give him a check and get the thing and the check bounces. You can prosecute. A week later it is on the account and you

can't do it. Senator Towe explained you can do it, but not criminally. Senator Mazurek commented a bad check is a bad check. Senator Pinsoneault moved HB 622 be recommended BE CONCURRED IN. The motion carried with Senators Daniels, Towe, and Yellowtail voting in opposition.

ACTION ON HB 363: A proposed amendment was presented to the committee (Exhibit 5). Senator Crippen moved adoption of the amendment in substitution for the prior amendment No. 1 adopted for this bill yesterday. Senator Towe commented he had problems with "clear and convincing evidence." Steve Brown stated the language proposed was designed to deal with Senator Towe's concern that an executive in the Ford company says don't tell me about this defect because I don't want to know. He thinks that is actual malice. They are trying to deal with that because others do not agree. "Has reason to know" almost gets you back to a negligence standard. Karl Englund stated the whole notion for "reason to know" is to have both an objective and a subjective standard in this particular provision. That is the most difficult thing to prove. That is why that is an important factor in there. This amendment still deals with strictly the subjective things. What did he know? What did he intentionally avoid knowing or what did he intentionally disregard? It is different from a negligence theory. It is the difference between what he had reason to know and what he should have known. Senator Towe stated he thinks there is a point when you are trying to prove what is in somebody's mind that is a very subjective and difficult thing. What we are being asked to do is prove that, and he is a little nervous about that. He would go along with it if he knew that were in with the clear and convincing evidence which seems to have no precedent to it. Senator Yellowtail asked why the "high degree of risk." Mr. Petesch explained the high degree of risk of harm is in the standard definition. The motion to amend carried (see roll call vote attached as Exhibit 6). Senator Towe stated he had problems with "clear and convincing." He moved that the bill be amended by striking "is" and the balance of that sentence and inserting "will produce in the mind of the tryer of fact a firm believe or conviction as to the truth of the assertion sought to be established." He stated that is from civil cases. Senator Blaylock asked if we have been getting by without having defined it. Mr. Petesch responded the language "clear and convincing" does not appear in the statutes in Montana at this time. Senator Blaylock asked if we had been using the language at all. Senator Towe responded it is a common law concept. Mr. Petesch stated federal law does. Senator Blaylock asked if we had been using it in court cases. It is not in the statutes, but it is a common law term. Mr. Petesch responded the cases he is aware of are in federal areas where they provide a civil penalty similar to a criminal act. Senator Blaylock asked if it were defined. Mr. Petesch responded not that he is aware of. Senator Blaylock asked if we were getting by with it. Senator Crippen stated it is highly unlikely we

STANDING COMMITTEE REPORT

March 23 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 622

third reading copy (blue color)

(Senator Blaylock)

DELETE PURPOSE ELEMENT FROM BAD CHECK STATUTE

Respectfully report as follows: That HOUSE BILL No. 622

BE CONCURRED IN

~~DO PASS~~

~~DO NOT PASS~~

Senator Joe Mazurek Chairman.